

\*E-FILED - 9/29/08\*

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LEO S. ARCHER, a.k.a. Ricky  
Thomas,

Plaintiff,

vs.

NAPA STATE HOSPITAL, et al.,  
Defendants.

No. C 07-0329 RMW (PR)

ORDER OF PARTIAL  
DISMISSAL AND  
TRANSFER; DENYING  
MOTIONS FOR  
PRELIMINARY INJUNCTION

(Docket Nos. 18 & 23)

Plaintiff filed the instant pro se civil rights complaint pursuant to 42 U.S.C. § 1983. He was granted leave to amend, and on January 10, 2008, he filed an amended complaint against officials at three institutions where he was formerly housed: Napa State Hospital (“NSH”), Corcoran State Prison (“Corcoran”) and Solano County Jail.<sup>1</sup> After reviewing the complaint pursuant to 28 U.S.C. § 1915A, the court will DISMISS the claims against the NSH defendants for failure to state a cognizable claim for relief. As the only remaining claims relate to events that allegedly took place at Corcoran and the Solano County Jail, within the venue of the Eastern District of California, and are against defendants located there, the case will be TRANSFERRED to the Eastern District

<sup>1</sup>On April 11, 2008, Plaintiff notified the court that he has been released from custody and is living in Oregon.

pursuant to 28 U.S.C. § 1406(a). The court will also DENY plaintiff's motions for preliminary injunction.

### DISCUSSION

#### A. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must, however, be liberally construed. Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1988).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged deprivation was committed by a person acting under the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).

#### B. Plaintiff's Claims

##### 1. Transfer

Plaintiff claims that officials at NSH violated his right to due process by transferring him from NSH to Corcoran. A non-consensual transfer from one institution to another, even to a considerably less favorable institution, does not violate the Due Process or Equal Protection clauses, *see* Olim v. Wakinekona, 461 U.S. 238, 244-48 (1983); Rizzo v. Dawson, 778 F.2d 527, 530 (9th Cir. 1985); *see also* Coakley v. Murphy, 884 F.2d 1218, 1221 (9th Cir. 1989) (transfer from work release center back to prison does not implicate due process nor equal protection rights), and no due process protections such as notice or a hearing need be afforded before a prisoner is transferred, *see* Montanye v. Haymes, 427 U.S. 236, 242 (1976).

The transfer alleged by plaintiff also did not violate a state created liberty interest protected by due process. In order to determine whether the transfer implicated a

1 protected liberty interest, the questions are (1) whether the statutes narrowly restrict the  
2 power of prison officials to deny inmates a transfer, and (2) whether the deprivation  
3 suffered due to denial of a transfer request is one of "real substance." See Sandin v.  
4 Conner, 515 U.S. 472, 477-87 (1995). In California, there are no substantive limitations  
5 on prison officials' discretion to grant or refuse the transfer of inmates from the state  
6 mental hospital to a state prison. See Welfare & Institutions Codes § 7301. A provision  
7 that merely provides procedural requirements, even if mandatory, cannot provide the  
8 basis for a constitutionally protected liberty interest. See Smith v. Noonan, 992 F.2d 987,  
9 989 (9th Cir. 1993). Moreover, in order to amount to a deprivation of "real substance"  
10 under Sandin, the transfer must (1) impose "atypical and significant hardship on the  
11 inmate in relation to the ordinary incidents of prison life," or (2) "inevitably affect the  
12 duration of [a] sentence." Sandin, 515 U.S. at 484, 487. Here, plaintiff complains simply  
13 that he was transferred to Corcoran. However, the alleged conditions at Corcoran were  
14 no different from the "ordinary incidents of prison life," and there is no allegation that the  
15 transfer inevitably affects the duration of his sentence. As the statutory language fails to  
16 meet the first prong of the Sandin test, and the alleged deprivation is not one of "real  
17 substance" under the second prong of the Sandin test, no protected liberty interest  
18 requiring constitutional protection is created.

19 Accordingly, plaintiff's allegations regarding his transfer from NSH to Corcoran  
20 do not implicate his right to due process or other provision of federal law, and therefore  
21 do not state a cognizable claim for relief under § 1983.

## 22 2. Medical Treatment

23 Plaintiff claims that NSH officials delayed providing him medical treatment for a  
24 torn ligament in his finger for eight and a half hours. Even if true, such a delay is  
25 relatively minor such that it amounts at most to negligence and does not rise to the level  
26 of a violation of the Eighth Amendment. See Toguchi v. Chung, 391 F.3d 1051, 1060-61  
27 (9th Cir. 2004) (medical malpractice or negligence does not constitute a violation of the  
28 Eighth Amendment); see, e.g., Frost v. Agnos, 152 F.3d 1124, 1130 (9th Cir. 1998)

(finding no merit in claims stemming from alleged delays in administering pain medication, treating broken nose and providing replacement crutch, because claims did not amount to more than negligence); O'Loughlin v. Doe, 920 F.2d 614, 617 (9th Cir. 1990) (repeatedly failing to satisfy requests for aspirins and antacids to alleviate headaches, nausea and pains is not constitutional violation; isolated occurrences of neglect may constitute grounds for medical malpractice but do not rise to level of unnecessary and wanton infliction of pain); Anthony v. Dowdle, 853 F.2d 741, 743 (9th Cir. 1988) (no more than negligence stated where prison warden and work supervisor failed to provide prompt and sufficient medical care); cf. McGuckin, 974 at 1062 (delay of seven months in providing medical care during which medical condition was left virtually untreated and plaintiff was forced to endure "unnecessary pain" sufficient to present colorable § 1983 claim). Accordingly, Plaintiff's allegations regarding the medical care for his finger injury does not state a cognizable claim for relief under § 1983.

### 3. Injury By Other Inmate

Plaintiff alleges that he was "attacked" by another inmate at NSH, resulting in an injury to his finger.

The failure of prison officials to protect inmates from attacks by other inmates violates the Eighth Amendment only when two requirements are met: (1) the deprivation alleged is, objectively, sufficiently serious; and (2) the prison official is, subjectively, deliberately indifferent to inmate safety. Farmer v. Brennan, 511 U.S. 825, 834 (1994). "Deliberate indifference" is the same as the standard for criminal recklessness, i.e., the officials know of and disregard an excessive risk to inmate health or safety. See id. at 837. The official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference. See id. An Eighth Amendment claimant need not show that a prison official acted or failed to act believing that harm actually would befall an inmate; it is enough that the official acted or failed to act despite his knowledge of a substantial risk of serious harm. See id. at 842.

1 Allegations in a pro se complaint sufficient to raise an inference that the named prison  
2 officials acted with deliberate indifference – i.e., that they knew that plaintiff faced a  
3 substantial risk of serious harm and disregarded that risk by failing to take reasonable  
4 measures to abate it – states a “failure-to-protect” claim. Hearns v. Terhune, 413 F.3d  
5 1036, 1041-42 (9th Cir. 2005).

6 Here, plaintiff alleges that the inmate attacked him because plaintiff did not give  
7 him a cigarette, and that the inmate failed to take his medication prior to attacking him.  
8 Plaintiff does not allege that any of the defendants knew or had reason to suspect that the  
9 inmate would attack plaintiff, had not taken his medication, or posed a threat of harm to  
10 plaintiff. See Berg, 794 F.2d at 459 (before being required to take action, prison official  
11 must have more than a “mere suspicion” that an attack will occur). Nor does plaintiff  
12 allege any facts from which it can reasonably be inferred that defendants had reason to  
13 suspect the alleged attack. To whatever extent plaintiff believes that defendants *should*  
14 *have known* of the danger, that is not sufficient to rise to a constitutional violation because  
15 neither negligence nor gross negligence are sufficient to state an Eighth Amendment  
16 claim under § 1983. See Farmer, 511 U.S. at 835-36 & n.4.

17 Accordingly, plaintiff’s allegations regarding the injury caused by another inmate  
18 do not rise to the level of an Eighth Amendment violation and do not state a cognizable  
19 claim for relief under § 1983.

20 4. Conditions of Confinement at Corcoran State Prison and Solano County Jail

21 The remainder of plaintiff’s allegations and claims concern conditions of  
22 confinement and actions taken by officials at Corcoran and the Solano County Jail. Both  
23 Corcoran and Solano County Jail are located in the Eastern District of California. See 28  
24 U.S.C. § 84. Therefore, venue for the remaining claims properly lies in the Eastern  
25 District, not in the Northern District. See 28 U.S.C. § 1391(b). Where a case is in the  
26 wrong venue, the district court has the discretion either to dismiss the case or transfer it to  
27 the proper federal court “in the interest of justice.” See 28 U.S.C. § 1406(a). In the  
28 interests of justice, this case will be transferred to the United States District Court for the

1 Eastern District of California.

2  
3 C. Motions for Preliminary Injunction

4 Plaintiff filed two motions for a preliminary injunction, both of which seek orders  
5 directing Solano County Jail officials to take action to alter the conditions of Plaintiff's  
6 confinement there. To begin with, plaintiff has neither complied with the notice  
7 requirement of Rule 65(a)(1) of the Federal Rules of Civil Procedure, nor certified the  
8 reasons for his not providing such notice, as required by Rule 65(b) of the Federal Rules  
9 of Civil Procedure. In an event, as plaintiff is no longer at the Solano County Jail, since  
10 his release from custody on April 18, 2008, his motions for injunctions against jail  
11 officials are moot. Accordingly, plaintiff's motions for preliminary injunction are  
12 DENIED.

13 **CONCLUSION**

14 For the foregoing reasons, the court hereby orders as follows:

15 1. Plaintiff's claims against defendants at Napa State Hospital, for alleged  
16 violations of the Eighth Amendment and due process, are DISMISSED for failure to state  
17 a cognizable claim for relief.

18 2. In the interests of justice, this case is TRANSFERRED to the United States  
19 District Court for the Eastern District of California, the proper venue for the remaining  
20 claims. See 28 U.S.C. § 1406(a).

21 3. Plaintiff's motions for preliminary injunction (Docket Nos. 18 & 23) are  
22 DENIED.

23 The Clerk shall transfer this matter forthwith. This order terminates Docket Nos.  
24 18 & 23.

25 IT IS SO ORDERED.

26 DATED: 9/29/08

27   
RONALD M. WHYTE  
United States District Judge